SENATE BILL No. 437

July 1, 2015, Introduced by Senator NOFS and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending the title and sections 6a, 6j, 6s, 10, 10a, 10f, 10p, 10r, and 10t (MCL 460.6a, 460.6j, 460.6s, 460.10, 460.10a, 460.10f,
An act to provide for the regulation and control of public and
certain private utilities and other services affected with a public
interest within this state; to provide for alternative energy
suppliers; to provide for licensing; to include municipally owned
utilities and other providers of energy under certain provisions of
this act; to create a public service commission and to prescribe
and define its powers and duties; to abolish the Michigan public
utilities commission and to confer the powers and duties vested by
law on the public service commission; to provide for the
continuance, transfer, and completion of certain matters and
proceedings; to abolish automatic adjustment clauses; to prohibit
certain rate increases without notice and hearing; to qualify
residential energy conservation programs permitted under state law
for certain federal exemption; to create a fund; to provide for a
restructuring of the manner in which energy is provided in this
state; to encourage the utilization of resource recovery
facilities; to prohibit certain acts and practices of providers of
energy; to allow for the securitization of stranded costs; to
reduce rates; to provide for appeals; to provide appropriations; to
declare the effect and purpose of this act; to prescribe remedies
and penalties; and to repeal acts and parts of acts.

Sec. 6a. (1) A gas or electric utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges. The commission shall notify the utility within 30 days of filing, whether the utility's petition or application is complete. A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (6). A petition or application pending before the commission prior to the adoption of filing forms and instructions pursuant to subsection (6) shall be evaluated based upon the filing requirements in effect at the time the petition or application was filed. If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete. If the commission has not notified the utility within 30 days of whether the utility's petition or application is complete, the application...
is considered complete. If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. For a petition or application pending before the commission prior to the effective date of the amendatory act that added this sentence, the 180-day period commences on the effective date of the amendatory act that added this sentence. If the utility uses projected costs and revenues for a future period in developing its requested rates and charges, the utility may not implement the equal percentage increases or decreases prior to the calendar date corresponding to the start of the projected 12-month period. For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order. The commission shall allocate any refund required by this section among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission. The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period. For any
portion of the refund which, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility. Nothing in this section impairs the commission's ability to issue a show cause order as part of its rate-making authority. An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel or purchased gas unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel or purchased gas. The rates charged by any utility pursuant to an automatic fuel or purchased gas adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel or purchased gas.

(2) The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of 12–10 months from the filing of the complete petitions or
applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses shall be abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, or purchased power separately from a full and complete hearing on a general rate case and may be held concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, or purchased power only to the extent that the purchases are reasonable and prudent. As used in this section:

(a) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.

(b) "General rate case" means a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility’s total cost of providing service.

(3) Except as otherwise provided in this subsection, if the commission fails to reach a final decision with respect to a completed petition or application to increase or decrease utility rates within the 12-month period following the filing of the completed petition or application, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the commission has an additional 12 months
from the date of the amendment to reach a final decision on the
petition or application. If the utility files for an extension of
time, the commission shall extend the 12-month period by the amount
of additional time requested by the utility.

(4) A utility shall not file a general rate case application
for an increase in rates earlier than 12 months after the date of
the filing of a complete prior general rate case application. A
utility may not file a new general rate case application until the
commission has issued a final order on a prior general rate case or
until the rates are approved under subsection (3).

(5) The commission shall, if requested by a gas utility,
establish load retention transportation rate schedules or approve
gas transportation contracts as required for the purpose of
retaining industrial or commercial customers whose individual
annual transportation volumes exceed 500,000 decatherms on the gas
utility's system. The commission shall approve these rate schedules
or approve transportation contracts entered into by the utility in
good faith if the industrial or commercial customer has the
installed capability to use an alternative fuel or otherwise has a
viable alternative to receiving natural gas transportation service
from the utility, the customer can obtain the alternative fuel or
gas transportation from an alternative source at a price which
would cause them to cease using the gas utility's system, and the
customer, as a result of their use of the system and receipt of
transportation service, makes a significant contribution to the
utility's fixed costs. The commission shall adopt accounting and
rate-making policies to ensure that the discounts associated with
the transportation rate schedules and contracts are recovered by
the gas utility through charges applicable to other customers if
the incremental costs related to the discounts are no greater than
the costs that would be passed on to those customers as the result
of a loss of the industrial or commercial customer's contribution
to a utility's fixed costs.

(6) Within 90 days of the effective date of the amendatory act
that added this subsection, the THE commission shall adopt standard
rate application filing forms and instructions for use in all
general rate cases filed by utilities whose rates are regulated by
the commission. For cooperative electric utilities whose rates are
regulated by the commission, in addition to rate applications filed
under this section, the commission shall continue to allow for rate
filings based on the cooperative's times interest earned ratio. The
commission may, in its discretion, modify the standard rate
application forms and instructions adopted under this subsection.

(7) If, on or before January 1, 2008, a merchant plant entered
into a contract with an initial term of 20 years or more to sell
electricity to an electric utility whose rates are regulated by the
commission with 1,000,000 or more retail customers in this state
and if, prior to BEFORE January 1, 2008, the merchant plant
generated electricity under that contract, in whole or in part,
from wood or solid wood wastes, then the merchant plant shall, upon
petition by the merchant plant, and subject to the limitation set
forth in subsection (8), recover the amount, if any, by which the
merchant plant's reasonably and prudently incurred actual fuel and
variable operation and maintenance costs exceed the amount that the
merchant plant is paid under the contract for those costs. This
subsection does not apply to landfill gas plants, hydro plants,
municipal solid waste plants, or to merchant plants engaged in
litigation against an electric utility seeking higher payments for
power delivered pursuant to contract.

(8) The total aggregate additional amounts recoverable by
merchant plants pursuant to subsection (7) in excess of the
amounts paid under the contracts shall not exceed $1,000,000.00 per
month for each affected electric utility. The $1,000,000.00 per
month limit specified in this subsection shall be reviewed by the
commission upon petition of the merchant plant filed no more than
once per year and may be adjusted if the commission finds that the
eligible merchant plants reasonably and prudently incurred actual
fuel and variable operation and maintenance costs exceed the amount
that those merchant plants are paid under the contract by more than
$1,000,000.00 per month. The annual amount of the adjustments shall
not exceed a rate equal to the United States consumer price index.
An adjustment shall not be made by the commission unless each
affected merchant plant files a petition with the commission. As
used in this subsection, "United States consumer price index" means
the United States consumer price index for all urban consumers as
defined and reported by the United States department of labor,
bureau of labor statistics. If the total aggregate amount by which
the eligible merchant plants reasonably and prudently incurred
actual fuel and variable operation and maintenance costs determined
by the commission exceed the amount that the merchant plants are
paid under the contract by more than $1,000,000.00 per month, the
commission shall allocate the additional $1,000,000.00 per month payment among the eligible merchant plants based upon the relationship of excess costs among the eligible merchant plants. The $1,000,000.00 limit specified in this subsection, as adjusted, shall not apply with respect to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after the effective date of the amendatory act that added this subsection. OCTOBER 6, 2008. The $1,000,000.00 per month payment limit under this subsection shall DOES not apply to merchant plants eligible under subsection (7) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants. AS USED IN THIS SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

(9) The commission shall issue orders to permit the recovery authorized under subsections (7) and (8) upon petition of the merchant plant. The merchant plant shall not be required to alter or amend the existing contract with the electric utility in order to obtain the recovery under subsections (7) and (8). The commission shall permit or require the electric utility whose rates are regulated by the commission to recover from its ratepayers all fuel and variable operation and maintenance costs that the electric utility is required to pay to the merchant plant as reasonably and prudently incurred costs.
(10) The commission may approve a revenue decoupling mechanism for a natural gas or electric utility that adjusts for increases or decreases in actual sales volumes compared to the projected levels used in the natural gas or electric utilities' most recent rate case. In determining the revenue decoupling mechanism for a utility, the commission shall give deference to the proposed revenue decoupling mechanism submitted by the utility. The commission may approve a revenue decoupling mechanism that is not submitted by a utility if the commission determines that the revenue decoupling mechanism is reasonable and prudent.

(11) As used in this section:

(A) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.

(B) "General rate case" means a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility's total cost of providing service.

Sec. 6j. (1) As used in this act:

(a) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of...
fuel burned by the utility for electric generation and the booked
costs of purchased and net interchanged power transactions by the
utility incurred under reasonable and prudent policies and
practices.

(b) "Power supply cost recovery factor" means that element of
the rates to be charged for electric service to reflect power
supply costs incurred by an electric utility and made pursuant to a
power supply cost recovery clause incorporated in the rates or rate
schedule of an electric utility.

(2) Pursuant to its authority under this act, the public
service commission may incorporate a power supply cost recovery
clause in the electric rates or rate schedule of an electric utility, but is not required to do so. Any order incorporating a
power supply cost recovery clause shall be as a result of a hearing
solely on the question of the inclusion of the clause in the rates
or rate schedule. A hearing UNDER THIS SUBSECTION shall be
conducted as a contested case pursuant to chapter 4 of the
administrative procedures act of 1969, Act No. 306 of the Public
Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287, or, pursuant to
subsection (18), as a result of a general rate case. Any order
incorporating a power supply cost recovery clause shall replace and
rescind any previous fuel cost adjustment clause or purchased and
net interchanged power adjustment clause incorporated in the
electric rates of the utility upon the effective date of the first
power supply cost recovery factor authorized for the utility under
its power supply cost recovery clause.
(3) In order to implement the power supply cost recovery clause established pursuant to subsection (2), an electric utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established pursuant to subsection (2), an electric utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its
existing sources of electrical generation and sources of electrical
generation under construction. The forecast shall include all of
the following:

(A) A description of all relevant major contracts and power
supply arrangements entered into or contemplated by the utility.

(B) A demonstration that the utility has adequate resources to
meet any reserve margin required by law.

(C) Any other information as the commission may require.

(5) If an electric utility files a power supply cost
recovery plan and a 5-year forecast as provided in subsections (3)
and (4), the commission shall conduct a proceeding, to be known as
a power supply and cost review, for the purpose of evaluating the
reasonableness and prudence of the power supply cost recovery plan
filed by a utility pursuant to subsection (3), and

establishing the power supply cost recovery factors to implement a
power supply cost recovery clause incorporated in the electric
rates or rate schedule of the utility. The power supply and cost
review shall be conducted as a contested case pursuant to chapter 4
of the administrative procedures act of 1969, Act No. 306 of the

(6) In its final order in a power supply and cost review, the
commission shall evaluate the reasonableness and prudence of the
decisions underlying the power supply cost recovery plan filed by
the electric utility pursuant to subsection (3), and shall
approve, disapprove, or amend the power supply cost recovery plan
accordingly. In evaluating the decisions underlying the power
supply cost recovery plan, the commission shall consider the cost
and availability of the electrical generation available to the
utility; the cost of short-term firm purchases available to the
utility; the availability of interruptible service; the ability of
the utility to reduce or to eliminate any firm sales to out-of-
state customers if the utility is not a multi-state utility whose
firm sales are subject to other regulatory authority; whether the
utility has taken all appropriate actions to minimize the cost of
fuel; and other relevant factors. The commission shall approve,
reject, or amend the 12 monthly power supply cost recovery factors
requested by the utility in its power supply cost recovery plan.
The factors shall not reflect items the commission could reasonably
anticipate would be disallowed under subsection (13). The factors
ordered shall be described in fixed dollar amounts per unit of
electricity, but may include specific amounts contingent on future
events.

(7) In its final order in a power supply and cost review, the
commission shall evaluate the decisions underlying the 5-year
forecast filed by a ELECTRIC utility under subsection (4). The commission may also indicate any cost items in
the 5-year forecast that, on the basis of present evidence, the
commission would be unlikely to permit the utility to recover from
its customers in rates, rate schedules, or power supply cost
recovery factors established in the future.

(8) The commission, on its own motion or the motion of any
party, may make a finding and enter a temporary order granting
approval or partial approval of a power supply cost recovery plan
in a power supply and cost recovery review, after first having
given notice to the parties to the review, and after having
afforded to the parties to the review a reasonable opportunity for
a full and complete hearing. A temporary order made pursuant to
UNDER this subsection shall be IS considered a final order for
purposes of judicial review.

(9) If the commission has made a final or temporary order in a
power supply and cost review, the—AN ELECTRIC utility may each
month incorporate in its rates for the period covered by the order
any amounts up to the power supply cost recovery factors permitted
in that order. If the commission has not made a final or temporary
order within 3 months of AFTER the submission of a complete power
supply cost recovery plan, or by the beginning of the period
covered in the plan, whichever comes later, or if a temporary order
has expired without being extended or replaced, then pending an
order which—THAT determines the power supply cost recovery factors,
a utility may each month adjust its rates to incorporate all or a
part of the power supply cost recovery factors requested in its
plan. Any amounts collected under the power supply cost recovery
factors before the commission makes its final order shall be IS
subject to prompt refund with interest to the extent that the total
amounts collected exceed the total amounts determined in the
commission's final order to be reasonable and prudent for the same
period of time.

(10) Not less—LATER than 3 months before the beginning of the
third quarter of the 12-month period—THE—DESCRIBED IN SUBSECTION
(3), AN ELECTRIC utility may file a revised power supply cost
recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, 1969 PA 306, MCL 24.271 TO 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more LATER than 45 days following the last day of each billing month in which a power supply cost recovery factor has been applied to customers' bills, the AN ELECTRIC utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the power supply cost recovery factor and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility, and the cost of power supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a AN ELECTRIC utility's power supply cost recovery plan, the commission shall
commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall DO ALL OF THE FOLLOWING:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission. The commission may order the utility to pay a penalty OF not to exceed MORE THAN 25% of the amount improperly collected. Costs incurred by the utility for penalty payments shall not be charged to customers.
(b) Disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission. If NOT DISALLOW THE CAPACITY CHARGES FOR ANY FACILITIES IF the commission has approved capacity charges in a contract with a qualifying facility, as THAT TERM IS defined by the federal energy regulatory commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117, the commission shall not disallow the capacity charges for the facility in the power supply cost reconciliation unless the commission has ordered revised capacity charges upon reconsideration pursuant to UNDER this subsection. A contract shall be IS valid and binding in accordance with its terms, and capacity charges paid pursuant to such a THAT contract shall be ARE recoverable costs of the utility for rate-making purposes notwithstanding that the order approving such a THAT contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or within 30 days of the effective date of the 1987 amendatory act that added subsection (19) BY JULY 29, 1987 if the order was issued after September 1, 1986 — and before the effective date of the 1987 amendatory act that added subsection (19). JUNE 29, 1987. The scope and manner of the review of capacity charges for a qualifying facility shall be determined by the commission. Except as to approvals for qualifying facilities granted by the commission prior to BEFORE June 1, 1987, proceedings before the
commission seeking **THOSE approvals** shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, **1969 PA 306, MCL 24.271 TO 24.287.** The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges in a contested case hearing after passage of a period necessary for financing the qualifying facility, provided that **IF BOTH OF THE FOLLOWING APPLY:**

(i) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval. 

(ii) Such a commission finding shall be set forth in a commission order subject to immediate judicial review.

The financing period for a qualifying facility during which previously approved capacity charges shall not be subject to commission reconsideration shall be 17.5 years, beginning with the date of commercial operation, for all qualifying facilities, except that the minimum financing period before reconsideration of the previously approved capacity charges shall be for the duration of the financing for a qualifying facility which produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

(c) Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or
any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

(d) Disallow transportation costs attributable to capital investments to develop a utility's capability to transport fuel or relocate fuel at the utility's facilities and disallow unloading and handling expenses incurred after receipt of fuel by the utility.

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that such fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

(f) Disallow charges unreasonably or imprudently incurred for fuel not taken.

(g) Disallow additional costs resulting from unreasonably or imprudently renegotiated fuel contracts.

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

(j) Disallow increases in charges for nuclear fuel disposal unless the utility has received the prior approval of the commission.

(14) In its order in a power supply cost reconciliation, the commission shall require an ELECTRIC utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and
prudent actions not precluded by the commission order in the power supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize an electric utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation
period in excess of the amount recovered over the period only if the utility demonstrates that the level of expenses resulted from reasonable and prudent management actions. The expenses amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply cost recovery factors with respect to such customers during the period covered. Charges for excess amounts shall be spread over a period that the commission determines to be appropriate.

(16) If the commission orders refunds or credits pursuant to subsection (14), or additional charges to customers pursuant to subsection (15), in its final order in a power supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility...

01028'15 KHS
during the appropriate period, or the authorized rate of return on
the common stock of the utility during that same period. Costs
incurred by the utility for refunds and interest on refunds shall
not be charged to customers. The commission shall determine a rate
of interest for insufficient recoveries and additional charges
equal to the average short-term borrowing rate available to the
utility during the appropriate period.

(17) To avoid undue hardship or unduly burdensome or excessive
cost, the commission may DO ALL OF THE FOLLOWING:

(a) Exempt an electric utility with fewer than 200,000
customers in the THIS state of Michigan from 1 or more of the
procedural provisions of this section or may modify the filing
requirements of this section.

(b) Exempt an energy utility organized as a cooperative
corporation pursuant to UNDER sections 98 to 109 of Act No. 327 of
the Public Acts of 1931, being sections 450.98 to 450.109 of the
Michigan Compiled Laws, 1931 PA 327, MCL 450.98 TO 450.109, from 1
or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the
commission may, upon application by an electric utility, set power
supply cost recovery factors, in a manner otherwise consistent with
this act, in an order resulting from a general rate case. Within
120 days following the effective date of this section, BY OCTOBER
27, 1987, for the purpose of setting power supply cost recovery
factors, the commission shall permit an electric utility to reopen
a general rate case in which a final order was issued within 120
days before or after the effective date of this section JUNE 29,
or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case, ALL OF THE FOLLOWING APPLY:

(a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount pursuant to subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

(c) The power supply cost recovery factors shall not be subject to revision pursuant to subsection (10).

(19) Five years after the effective date of the amendatory act that added this subsection, BY JUNE 29, 1992, and every 5 years thereafter, the standing committees of the house and senate that deal with RESPONSIBLE FOR LEGISLATION CONCERNING public utilities shall review the amendatory act that added this subsection EFFECT OF 1987 PA 81. Sec. 6s. (1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an
existing electric generation facility, purchase an existing
electric generation facility, or enter into a power purchase
agreement for the purchase of electric capacity for a period of 6
years or longer may submit an application to the commission seeking
a certificate of necessity for that construction, investment, or
purchase if that construction, investment, or purchase costs
$500,000,000.00 or more and a portion of the costs would be
allocable to retail customers in this state. A significant
investment in an electric generation facility includes a group of
investments reasonably planned to be made over a multiple year
period not to exceed 6 years for a singular purpose such as
increasing the capacity of an existing electric generation plant.
The commission shall not issue a certificate of necessity under
this section for any environmental upgrades to existing electric
generation facilities or for a renewable energy system.

(1) THE COMMISSION SHALL, WITHIN 120 DAYS OF THE EFFECTIVE
DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T AND EVERY 4 YEARS
THEREAFTER, COMMENCE A PROCEEDING TO ESTABLISH STATEWIDE PARAMETERS
FOR INTEGRATED RESOURCE PLANS REQUIRED UNDER SUBSECTION (2). THE
COMMISSION SHALL, IN CONSULTATION WITH THE MICHIGAN AGENCY FOR
ENERGY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY, DO ALL OF THE
FOLLOWING IN A PROCEEDING UNDER THIS SUBSECTION:

(A) CONDUCT AN ASSESSMENT OF THE POTENTIAL FOR REDUCTION IN
ENERGY WASTE IN THIS STATE, BASED ON WHAT IS ECONOMICALLY FEASIBLE,
AS WELL AS TECHNOLOGICALLY FEASIBLE.

(B) IDENTIFY ANY NEW STATE OR FEDERAL ENVIRONMENTAL STANDARD,
LAW, OR RULE AND HOW THAT STANDARD, LAW, OR RULE WOULD AFFECT
ELECTRIC UTILITIES IN THIS STATE.

(C) IDENTIFY ANY PROPOSED STATE OR FEDERAL ENVIRONMENTAL STANDARD, LAW, OR RULE THAT HAS BEEN PUBLISHED IN THE MICHIGAN REGISTER OR THE FEDERAL REGISTER AND HOW THE PROPOSED STANDARD, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

(D) IDENTIFY ANY REQUIRED RELIABILITY STANDARDS IN AREAS OF THIS STATE.

(E) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH ELECTRIC UTILITY MUST USE IN DEVELOPING ITS INTEGRATED RESOURCE PLAN FILED UNDER SUBSECTION (2), INCLUDING ALL OF THE FOLLOWING:

(i) ANY REQUIRED RELIABILITY STANDARDS.

(ii) ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

(iii) ANY REQUIRED INVESTMENTS IN GENERATION, TRANSMISSION, AND DISTRIBUTION INFRASTRUCTURE.

(iv) ANY SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT COULD ADDRESS ANY NEED FOR ADDITIONAL GENERATION CAPACITY, INCLUDING, BUT NOT LIMITED TO, THE TYPE OF GENERATION TECHNOLOGY FOR ANY PROPOSED GENERATION FACILITY, PROJECTED ENERGY EFFICIENCY SAVINGS, AND PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS.

(v) ANY REGIONAL INFRASTRUCTURE LIMITATIONS IN THIS STATE.

(vi) THE PROJECTED COSTS OF DIFFERENT TYPES OF FUEL USED FOR ELECTRIC GENERATION.

(F) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY OTHER REGULATORY REQUIREMENTS THAT SHOULD BE INCLUDED IN MODELING SCENARIOS OR ASSUMPTIONS.

(G) PUBLISH A COPY OF THE PROPOSED MODELING SCENARIOS AND
ASSUMPTIONS TO BE USED IN INTEGRATED RESOURCE PLANS ON THE
COMMISSION'S WEBSITE.

(H) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND
ASSUMPTIONS EACH ELECTRIC UTILITY MUST USE IN DEVELOPING ITS
INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD
HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING
SCENARIOS AND ASSUMPTIONS.

(2) NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
AMENDATORY ACT THAT ADDED SECTION 6T, EACH ELECTRIC UTILITY WHOSE
RATES ARE REGULATED BY THE COMMISSION SHALL FILE WITH THE
COMMISSION AN INTEGRATED RESOURCE PLAN THAT MINIMIZES THE NET
PRESENT VALUE OF FORWARD-LOOKING CAPITAL AND PRODUCTION COSTS WHILE
MEETING ALL APPLICABLE STATE AND FEDERAL RELIABILITY AND
ENVIRONMENTAL REGULATIONS AND PROVIDES A LONG-TERM PROJECTION OF
THE UTILITY'S LOAD OBLIGATIONS AND A PLAN TO MEET THOSE OBLIGATIONS
OVER THE ENSUING TERM OF THE PLAN. THE COMMISSION SHALL ESTABLISH
FILING REQUIREMENTS FOR AN INTEGRATED RESOURCE PLAN THAT
DEMONSTRATES HOW THE UTILITY WILL COMPLY WITH REQUIREMENTS TO
PROVIDE GENERATION RELIABILITY, INCLUDING MEETING RESERVE MARGIN
REQUIREMENTS ESTABLISHED BY THE COMMISSION OR A FEDERALLY
AUTHORIZED REGIONAL TRANSMISSION SYSTEM OPERATOR FOR A 5-YEAR, 10-
YEAR, AND 15-YEAR PLANNING PERIOD.

(3) (2) FOR AN ELECTRIC UTILITY WITH FEWER THAN 1,000,000
CUSTOMERS, THE commission may implement separate FILING
REQUIREMENTS, review criteria, and approval standards for electric
utilities with less than 1,000,000 retail customers who seek a
certificate of necessity for projects costing less than
$500,000,000.00. That differ from those established under subsection (2). An electric utility providing electric tariff service to customers both in this state and in at least 1 other state may design its integrated resource plan to cover all its customers on that multi-state basis. If an electric utility has filed a multi-state integrated resource plan that includes its service area in this state with the relevant utility regulatory commission in another state in which it provides tariff service to retail customers, the commission shall accept that integrated resource plan filing in this state. However, the commission may require supplemental information if necessary to evaluate the plan. Upon request of an electric utility, the commission may adjust the filing dates for a multi-state integrated resource plan filing in this state to place its review on the same timeline as other relevant state reviews.

—-(2) An electric utility submitting an application under this section may request 1 or more of the following:

—-(a) A certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase is needed.

—-(b) A certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility or the terms of the power purchase agreement represent the most reasonable and prudent means of meeting that power need.

—-(c) A certificate of necessity that the price specified in the power purchase agreement will be recovered in rates from the
electric utility's customers.

(d) A certificate of necessity that the estimated purchase or capital costs of and the financing plan for the existing or proposed electric generation facility, including, but not limited to, the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed electric generation facility, will be recoverable in rates from the electric utility's customers subject to subsection (4)(c).

(4) BEFORE FILING ITS FIRST INTEGRATED RESOURCE PLAN UNDER

THIS SECTION, EACH ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY

THE COMMISSION SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDE

GENERATION CAPACITY RESOURCES TO SERVE THE UTILITY'S REASONABLY

PROJECTED ELECTRIC LOADS AND APPLICABLE RESERVE MARGINS FOR ITS

CUSTOMERS IN THIS STATE AND CUSTOMERS THE UTILITY SERVES IN OTHER

STATES DURING THE INITIAL 3-YEAR PLANNING PERIOD TO BE CONSIDERED

IN ITS INTEGRATED RESOURCE PLAN TO BE FILED UNDER THIS SECTION. THE

REQUEST FOR PROPOSALS IS ONLY REQUIRED BEFORE THE UTILITY'S FILING

OF ITS FIRST INTEGRATED RESOURCE PLAN. RESPONSES TO A REQUEST FOR

PROPOSALS ISSUED UNDER THIS SUBSECTION SHOULD INCLUDE PROPOSALS TO

PROVIDE SUPPLY SIDE TURNKEY CONSTRUCTION OF GENERATING CAPACITY

RESOURCES, RENEWABLE GENERATION, OR CAPACITY STORAGE, WHICH ASSETS

ARE DESIGNED TO BE PURCHASED BY THE UTILITY, AND MAY INCLUDE

PROPOSALS FOR THE SALE OF EXISTING GENERATING ASSETS, BUT SHALL NOT

INCLUDE PROPOSALS FOR DEMAND SIDE RESOURCES. RESPONDENTS TO A

REQUEST FOR PROPOSALS MAY REQUEST THAT CERTAIN PROPRIETARY

INFORMATION BE EXEMPT FROM PUBLIC DISCLOSURE AS ALLOWED BY THE

COMMISSION. A UTILITY THAT ISSUES A REQUEST FOR PROPOSALS UNDER
THIS SUBSECTION SHALL USE THE RESULTING PROPOSALS TO INFORM ITS 
INTEGRATED RESOURCE PLAN FILED UNDER THIS SECTION AND INCLUDE THOSE 
PROPOSALS AS PART OF ITS INTEGRATED RESOURCE PLAN. A UTILITY IS NOT 
REQUIRED TO ACCEPT ANY PROPOSALS SUBMITTED IN RESPONSE TO ITS 
REQUEST FOR PROPOSALS.

(5) Within NOT LATER THAN 270 days of the filing of an application—to AFTER AN ELECTRIC UTILITY FILES AN INTEGRATED RESOURCE 
PLAN under this section, the commission shall issue an order 
granting APPROVING or denying, WITH RECOMMENDED CHANGES, the 
requested certificate of necessity—UTILITY'S INTEGRATED RESOURCE 
PLAN. The commission shall hold a hearing on the application— 
INTEGRATED RESOURCE PLAN. The hearing shall be conducted as a 
contested case pursuant to chapter 4 of the administrative 
commission shall allow intervention by interested persons. 
Reasonable—THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM 
THE DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING WHETHER THE 
INTEGRATED RESOURCE PLAN CAN REASONABLY BE EXPECTED TO ACHIEVE 
COMPLIANCE WITH APPLICABLE STATE AND FEDERAL ENVIRONMENTAL 
REGULATIONS, AND WHETHER THE PROPOSED INTEGRATED RESOURCE PLAN CAN 
REASONABLY BE EXPECTED TO RESULT IN POLLUTION REDUCTIONS REQUIRED 
BY APPLICABLE STATE OR FEDERAL REGULATIONS. THE COMMISSION MAY 
INVITE OTHER STATE AGENCIES TO PROVIDE TESTIMONY REGARDING OTHER 
RELEVANT REGULATORY REQUIREMENTS RELATED TO THE INTEGRATED RESOURCE 
PLAN. THE COMMISSION SHALL PERMIT REASONABLE discovery shall be 
permitted before—AFTER AN INTEGRATED RESOURCE PLAN IS FILED and 
during the hearing in order to assist parties and interested
persons in obtaining evidence concerning the application, 
INTEGRATED RESOURCE PLAN, including, but not limited to, the 
reasonableness and prudence of the construction, investment, or 
purchase for which the certificate of necessity has been requested. 
PLAN. The commission shall grant the request if it determines all of the following:

(a) That the electric utility has demonstrated a need for 
the power that would be supplied by the existing or proposed 
electric generation facility or pursuant to the proposed power 
purchase agreement through its approved integrated resource plan 
that complies with subsection (11) INVESTMENTS AND RESOURCES 
INCLUDED IN THE PROPOSED INTEGRATED RESOURCE PLAN.

(b) The electric utility has demonstrated that the investments 
and resources included in the proposed integrated resource plan 
would be sufficient to provide the capacity necessary to serve the 
utility's reasonably projected electric loads and applicable 
reserve margins.

(c) The information supplied indicates that the existing 
or proposed electric generation facility PROPOSED INTEGRATED 
RESOURCE PLAN AND THE RESOURCES CONTAINED IN THE PLAN will comply 
with all applicable state and federal environmental standards, 
laws, and rules.

(d) The estimated cost of power from the existing or 
proposed electric generation facility or the price of power 
specified in the proposed power purchase agreement is reasonable. 
The commission shall find that the cost is reasonable if, in the 
construction or investment in a new or existing facility, to the
extent it is commercially practicable, the estimated costs are the
result of competitively bid engineering, procurement, and
construction contracts, or in a power purchase agreement, the cost
is the result of a competitive solicitation. Up to 150 days after
an electric utility makes its initial filing, it may file to update
its cost estimates if they have materially changed. No other aspect
of the initial filing may be modified unless the application is
withdrawn and refiled. A utility's filing updating its cost
estimates does not extend the period for the commission to issue an
order granting APPROVING or denying a certificate of necessity. THE
INTEGRATED RESOURCE PLAN. An affiliate of an electric utility that
serves customers in this state and at least 1 other state may
participate in the competitive bidding to provide engineering,
procurement, and construction services to that electric utility for
a project covered by this section.

(E) (d) The existing or proposed electric generation facility
or proposed power purchase agreement PROPOSED INTEGRATED RESOURCE
PLAN represents the most reasonable and prudent means of meeting
the power need CAPACITY NEEDS relative to other resource options
for meeting power demand, including energy efficiency programs and
electric transmission efficiencies CAPACITY NEEDS, INCLUDING ENERGY
EFFICIENCY PROGRAMS, DEMAND SIDE MANAGEMENT, AND TRANSMISSION
EFFICIENCIES. TO DETERMINE WHETHER THE INTEGRATED RESOURCE PLAN IS
THE MOST REASONABLE AND PRUDENT MEANS OF MEETING CAPACITY NEEDS,
THE COMMISSION SHALL CONSIDER WHETHER THE PLAN APPROPRIATELY
BALANCES ALL OF THE FOLLOWING FACTORS:

(i) RESOURCE ADEQUACY AND CAPACITY TO SERVE ANTICIPATED PEAK
ELECTRIC LOADS AND RESERVE MARGIN REQUIREMENTS.

(ii) COMPLIANCE WITH APPLICABLE STATE AND FEDERAL ENVIRONMENTAL REGULATIONS.

(iii) COMPETITIVE PRICING.

(iv) RELIABILITY.

(v) COMMODITY PRICE RISKS.

(vi) DIVERSITY OF GENERATION SUPPLY.

(F) (e) To the extent practicable, the construction or investment in a new or existing facility—CAPACITY RESOURCE in this state is completed using a workforce composed of residents of this state as determined by the commission. This subdivision does not apply to a facility—CAPACITY RESOURCE that is located in a county that lies on the border with another state.

(6) (5) The commission—SHALL consider any other costs or information related to the costs associated with the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed purchase agreement—PROPOSED INTEGRATED RESOURCE PLAN or alternatives to the proposal—PLAN raised by intervening parties, WHICH MAY INCLUDE ELECTRIC CUSTOMERS, POTENTIAL RESOURCE SUPPLIERS OF THE UTILITY'S PROPOSED INTEGRATED RESOURCE PLAN, ANY REGIONAL TRANSMISSION ORGANIZATION SERVING ANY PORTION OF THE UTILITY'S SERVICE AREA, THE ATTORNEY GENERAL OF THIS STATE, OR ANY OTHER PARTIES APPROVED BY THE COMMISSION.

(7) (6) In a certificate of necessity—APPROVING AN INTEGRATED RESOURCE PLAN under this section, the commission shall specify the costs approved for the construction of or significant investment in
the AN electric generation facility, the price approved for the
purchase of the AN existing electric generation facility, or the
price approved for the A purchase of power pursuant to UNDER the
terms of the power purchase agreement, OR THE COSTS ASSOCIATED WITH
OTHER INVESTMENTS OR RESOURCES USED TO MEET CAPACITY NEEDS THAT ARE
INCLUDED IN THE APPROVED INTEGRATED RESOURCE PLAN. FOR POWER
PURCHASE AGREEMENTS THAT A UTILITY ENTERS INTO WITH AN ENTITY THAT
IS NOT AFFILIATED WITH THAT UTILITY AFTER THE EFFECTIVE DATE OF THE
AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION MAY AUTHORIZE
A RATE OF RETURN THAT DOES NOT EXCEED THE UTILITY'S WEIGHTED
AVERAGE COST OF CAPITAL. THE COSTS FOR SPECIFICALLY IDENTIFIED
INVESTMENTS INCLUDED IN AN APPROVED INTEGRATED RESOURCE PLAN THAT
ARE COMMENCED WITHIN 3 YEARS AFTER THE COMMISSION'S ORDER APPROVING
THE INITIAL PLAN, AMENDED PLAN, OR PLAN REVIEW ARE CONSIDERED
REASONABLE AND PRUDENT FOR COST RECOVERY PURPOSES.

(8) (7) The AN ELECTRIC utility shall annually, file, or more
frequent FREQUENTLY if required by the commission, FILE reports to
the commission regarding the status of any project for which a
certificate of necessity AN INTEGRATED RESOURCE PLAN THAT has been
granted APPROVED under subsection (4), (5), including an update
concerning the cost and schedule of that project. ANY PROJECTS
INCLUDED IN THE INTEGRATED RESOURCE PLAN.

(9) (8) If the commission denies any of the relief requested
by an electric utility, AN ELECTRIC UTILITY'S INTEGRATED RESOURCE
PLAN, the electric utility may withdraw its application or proceed
with the A proposed construction, purchase, investment, or power
purchase agreement CONTAINED IN THE WITHDRAWN INTEGRATED RESOURCE
PLAN without a certificate and the assurances granted under this section. IF THE COMMISSION DENIES THE UTILITY'S INTEGRATED RESOURCE PLAN BUT THE UTILITY ACCEPTS THE COMMISSION'S RECOMMENDATIONS REGARDING THE INTEGRATED RESOURCE PLAN, THE INTEGRATED RESOURCE PLAN IS CONSIDERED APPROVED AS MODIFIED BY THE UTILITY CONSISTENT WITH THE COMMISSION'S RECOMMENDATIONS.


(11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN MAY BE REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A PARTY TO THE COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. ALL APPEALS OF THE ORDER SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON APPEAL SHALL BE BASED SOLELY ON THE RECORD BEFORE THE COMMISSION AND BRIEFS TO THE COURT AND IS LIMITED TO WHETHER THE ORDER
CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED
STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS
ACT.

(12) (9) Once the electric generation facility or power
purchase agreement is considered used and useful or as otherwise
provided in subsection (12), the commission shall include in an
electric utility's retail rates all reasonable and prudent costs
for an electric generation facility or power purchase agreement for
which a certificate of necessity has been granted. AN INTEGRATED
RESOURCE PLAN APPROVED BY THE COMMISSION. The commission shall not
disallow recovery of costs an electric utility incurs in
constructing, investing in, or purchasing an electric generation
facility or in purchasing power pursuant to a power purchase
agreement for which a certificate of necessity has been granted.
IMPLEMENTING AN APPROVED INTEGRATED RESOURCE PLAN, if the costs do
not exceed the costs approved by the commission in the certificate.
Once the electric generation facility or power purchase agreement
is considered used and useful or as otherwise provided in
subsection (12), the commission shall include in the electric utility's retail rates costs actually
incurred by the electric utility that exceed the costs approved by
the commission only if the commission finds that the additional
costs are reasonable and prudent. If the actual costs incurred by
the electric utility exceed the costs approved by the commission,
the electric utility has the burden of proving by a preponderance
of the evidence that the costs are reasonable and prudent. The
portion of the cost of a plant, facility, or power purchase
agreement, which OR OTHER INVESTMENT IN A RESOURCE THAT MEETS A
DEMONSTRATED NEED FOR CAPACITY THAT exceeds 110% of the cost
approved by the commission is presumed to have been incurred due to
a lack of prudence. The commission may include any or all of the
portion of the cost in excess of 110% of the cost approved by the
commission if the commission finds by a preponderance of the
evidence that the costs were prudently incurred.

(13) Within 90 days of AFTER the effective date of the
amendatory act that added this section 6T, the commission shall
adopt standard application filing forms and instructions for use in
all requests for a certificate of necessity AN INTEGRATED RESOURCE
PLAN under this section. The commission may, in its discretion,
modify the standard application filing forms and instructions
adopted under this section.

(14) The commission shall establish standards for an
integrated resource plan that shall be filed by an electric utility
requesting a certificate of necessity under this section. An
integrated resource plan shall include all of the following:

(a) A long-term forecast of the electric utility's load growth
under various reasonable scenarios.

(b) The type of generation technology proposed for the A
generation facility CONTAINED IN THE PLAN and the proposed capacity
of the generation facility, including projected fuel and regulatory
costs under various reasonable scenarios.

(c) Projected energy and capacity purchased or produced by the
electric utility pursuant to any renewable portfolio standard FROM
A CLEAN ENERGY RESOURCE.
(d) Projected energy efficiency program savings under any energy efficiency program requirements and the projected costs for that program. DETAILS REGARDING THE UTILITY'S PLAN TO ELIMINATE ENERGY WASTE, INCLUDING THE TOTAL AMOUNT OF WASTE REDUCTION EXPECTED TO BE ACHIEVED ANNUALLY, THE COST OF THE PLAN, AND THE EXPECTED SAVINGS FOR ITS RETAIL CUSTOMERS.

(e) Projected load management and demand response savings for the electric utility and the projected costs for those programs.

(f) An analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed generation facility or purchased power agreement, including additional renewable energy, energy efficiency programs, load management, and demand response, beyond these amounts contained in subdivisions (e) to (e).

(g) Electric transmission options for the electric utility.

(H) DATA REGARDING THE UTILITY'S CURRENT GENERATION PORTFOLIO INCLUDING THE AGE, LICENSING STATUS, AND REMAINING ESTIMATED TIME OF OPERATION FOR EACH FACILITY IN THE PORTFOLIO.

(I) PLANS FOR MEETING CURRENT AND FUTURE CAPACITY NEEDS WITH COST ESTIMATES FOR ALL PROPOSED CONSTRUCTION, MAJOR INVESTMENTS, AND POWER PURCHASE AGREEMENTS.

(J) AN ANALYSIS OF THE COST, CAPACITY FACTOR, AND VIABILITY OF ALL GENERATION OPTIONS AVAILABLE TO MEET PROJECTED CAPACITY NEEDS.

(K) PROJECTED ECONOMIC AND ENVIRONMENTAL THREATS THAT COULD IMPACT RATES AND THE DELIVERY OF SERVICE.

(l) PROJECTED RATE IMPACT FOR THE PERIODS COVERED BY THE PLAN.
(M) HOW THE UTILITY WILL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND RULES.

(N) A FORECAST OF THE UTILITY'S PEAK DEMAND AND DETAILS REGARDING HOW THE UTILITY PROPOSES TO REDUCE PEAK DEMAND.

(15) (12)—The commission shall allow financing interest cost recovery in an electric utility's base rates on construction work in progress for capital improvements approved under this section prior to the assets being considered used and useful. Regardless of whether or not the commission authorizes base rate treatment for construction work in progress financing interest expense, an electric utility shall be allowed to recognize, accrue, and defer the allowance for funds used during construction related to equity capital.

(13) As used in this section, "renewable energy system" means that term as defined in the clean, renewable, and efficient energy act.

(16) AN ELECTRIC UTILITY MAY SEEK AMENDMENTS TO AN APPROVED INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL CONSIDER THE AMENDMENTS UNDER THE SAME PROCESS AND STANDARDS THAT GOVERN THE REVIEW AND APPROVAL OF AN INTEGRATED RESOURCE PLAN.

(17) AN ELECTRIC UTILITY SHALL FILE AN APPLICATION FOR REVIEW OF ITS INTEGRATED RESOURCE PLAN NOT LATER THAN 3 YEARS AFTER THE EFFECTIVE DATE OF THE MOST RECENT COMMISSION ORDER APPROVING A PLAN, A PLAN AMENDMENT, OR A PLAN REVIEW. THE COMMISSION SHALL CONSIDER A PLAN REVIEW UNDER THE SAME PROCESS AND STANDARDS ESTABLISHED IN THIS SECTION FOR REVIEW AND APPROVAL OF AN INTEGRATED RESOURCE PLAN.
THE COMMISSION MAY ORDER AN ELECTRIC UTILITY TO FILE A PLAN REVIEW. THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY REQUEST THE COMMISSION TO ORDER A PLAN REVIEW TO ADDRESS MATERIAL CHANGES IN ENVIRONMENTAL REGULATIONS AND REQUIREMENTS THAT OCCUR AFTER THE COMMISSION'S APPROVAL OF AN INTEGRATED RESOURCE PLAN. AN ELECTRIC UTILITY MUST FILE A PLAN REVIEW WITHIN 270 DAYS AFTER THE COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

SEC. 6T. (1) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL COMMENCE A STUDY IN COLLABORATION WITH REPRESENTATIVES OF EACH CUSTOMER CLASS, UTILITIES WITH 1,000,000 OR MORE RETAIL CUSTOMERS IN THIS STATE, AND OTHER INTERESTED PARTIES TO CONSIDER THE ADOPTION OF PERFORMANCE-BASED REGULATION, UNDER WHICH A UTILITY'S PROFITS WOULD DEPEND ON THE UTILITY ACHIEVING TARGETED POLICY OUTCOMES. THE OVERALL GOAL OF PERFORMANCE-BASED REGULATION IS TO FOSTER GREATER INNOVATION AND INVESTMENT BY THE UTILITY INDUSTRY IN THIS STATE, IN LIGHT OF THE AGING UTILITY INFRASTRUCTURE IN THIS STATE AND DEMANDS ON THE UTILITIES WITH REGARD TO THE ENVIRONMENT AND CLIMATE.

(2) IN THE STUDY REQUIRED UNDER THIS SECTION, THE COMMISSION SHALL REVIEW PERFORMANCE-BASED REGULATION SYSTEMS THAT HAVE BEEN IMPLEMENTED IN ANOTHER STATE OR COUNTRY, INCLUDING, BUT NOT LIMITED TO, THE RIIO (REVENUE = INCENTIVES + INNOVATION + OUTPUTS) MODEL UTILIZED IN THE UNITED KINGDOM.

(3) A PERFORMANCE-BASED REGULATION SYSTEM SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING FACTORS:

(A) A METHOD FOR ESTIMATING THE REVENUE NEEDED BY A UTILITY
DURING A MULTI-YEAR PRICING PERIOD, AND A FAIR RETURN, THAT USES FOR Forecasts OF EFFICIENT TOTAL EXPENDITURES BY THE UTILITY INSTEAD OF Distinguishing BETWEEN OPERATING AND CAPITAL COSTS.

(B) AN INCREASE IN THE LENGTH OF TIME BETWEEN RATE CASES, TO PROVIDE UTILITIES WITH MORE OPPORTUNITY TO RETAIN COST SAVINGS WITHOUT THE THREAT OF IMMINENT RATE ADJUSTMENTS, AND TO ENCOURAGE UTILITIES TO MAKE INVESTMENTS THAT HAVE PAYBACK PERIODS LONGER THAN 5 YEARS.

(C) PERFORMANCE INCENTIVES ESTABLISHED AT THE OUTSET OF A RATE PERIOD THAT PERTAIN TO ISSUES SUCH AS CUSTOMER SATISFACTION, SAFETY, RELIABILITY, CONDITIONS FOR CONNECTION, ENVIRONMENTAL IMPACT, AND SOCIAL OBLIGATIONS. BASED ON A UTILITY'S PERFORMANCE REGARDING THOSE INCENTIVES, A UTILITY MAY RECEIVE FINANCIAL REWARDS OR PENALTIES THAT ADJUST ITS BASE REVENUE.

(D) PROFIT-SHARING PROVISIONS THAT CAN SPREAD EFFICIENCY GAINS AMONG CONSUMERS AND UTILITY SHAREHOLDERS AND CAN REDUCE THE DEGREE OF DOWNSIDE RISK ASSOCIATED WITH ATTEMPTS AT INNOVATION.

(E) THE USE OF UTILITY-DRAFTED BUSINESS PLANS BASED ON THE FACTORS DESCRIBED IN SUBDIVISIONS (A) TO (D) AND INFORMED BY CONSULTATION WITH ENVIRONMENTAL GROUPS, CONSUMER ADVOCATES, GOVERNMENT OFFICIALS, AND THIRD-PARTY SERVICE PROVIDERS. A BUSINESS PLAN WOULD INCLUDE PROPOSALS FOR BASE REVENUE, VARIOUS OUTCOMES OF INTEREST THAT WILL BE PURSUED, THE METRICS THAT WILL BE USED TO GAUGE THE ACHIEVEMENT OF THOSE OUTCOMES, AND THE METHODS THAT WOULD BE USED TO MANAGE UNCERTAINTY DURING THE EXTENDED PRICE CONTROL PERIOD.

(4) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE
AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REPORT
AND MAKE RECOMMENDATIONS IN WRITING TO THE LEGISLATURE AND GOVERNOR
BASED ON THE RESULT OF THE STUDY CONDUCTED UNDER THIS SECTION.

Sec. 10. (1) Sections 10 THROUGH SECTIONS 10A THROUGH 10BB shall be known and may be cited as the "CUSTOMER CHOICE AND "
"ELECTRICITY RELIABILITY ACT".

(2) The purpose of sections 10A THROUGH 10BB IS TO DO ALL OF
THE FOLLOWING:

(a) To ensure that all retail customers in this state of
electric power have a choice of electric suppliers.

(b) To allow and encourage the Michigan public service
commission to foster competition in this state in the provision of
electric supply and maintain regulation of electric supply for
customers who continue to choose supply from incumbent electric
utilities.

(c) To encourage the development and construction of merchant
plants which will diversify the ownership of electric generation in
this state.

(A) (d) To ensure that all persons in this state are afforded
safe, reliable electric power at a reasonable COMPETITIVE rate.

(B) (e) To improve the opportunities for economic development
in this state and to promote financially healthy and competitive
utilities in this state.

(C) (f) To maintain, foster, and encourage robust, reliable,
and economic generation, distribution, and transmission systems to
provide this state's electric suppliers and generators an
opportunity to access regional sources of generation and wholesale
power markets and to ensure a reliable supply of electricity in this state.

Sec. 10a. (1) The commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose TO TAKE SERVICE FROM an alternative electric supplier. The orders shall do all of the following:

(a) PROVIDE EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, PROVIDE that no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.

(b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis. and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first come first served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy
alloccents for the utility's distribution service territory is
greater than 10% of the utility's weather-adjusted retail sales in
the calendar year preceding the date of allocation. THE ANNUAL
ENERGY ALLOTMENT AWARDED UNDER THIS SUBDIVISION SHALL BE USED BY
THE COMMISSION TO DETERMINE THE ELIGIBILITY OF A CUSTOMER TO
RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER
SUBDIVISION (D). If the sales of a utility are less in a subsequent
year or if the energy usage of a customer receiving electric
service from an alternative electric supplier exceeds its annual
energy allotment for that facility, that customer shall not be
forced to purchase electricity from a utility, but may purchase
electricity from an alternative electric supplier for that facility
during that calendar year.

(c) Notwithstanding any other provision of this section,
customers seeking to expand usage at a facility that has been
continuously served through an alternative electric supplier since
April 1, 2008 shall be permitted to purchase electricity from an
alternative electric supplier for both the existing and any
expanded load at that facility as well as any new facility
constructed or acquired after the effective date of the amendatory
act that added this subdivision that is similar in nature if the
customer owns more than 50% of the new facility.

(C) Notwithstanding any other provision of this section,
any customer operating an iron ore mining facility, iron ore
processing facility, or both, located in the Upper Peninsula of
this state, shall be permitted to purchase all or any portion
of its electricity from an alternative electric supplier,
regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, IF THE UTILITY AGREES OR IF THAT CUSTOMER AND UTILITY HAVE ENTERED INTO A SETTLEMENT AGREEMENT ALLOWING THE CUSTOMER TO PURCHASE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

(D) PROVIDE THAT A CUSTOMER THAT IS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON JANUARY 1, 2015 MAY ELECT TO CONTINUE TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. EXCEPT AS PROVIDED IN SUBDIVISION (E), BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T, ONLY CUSTOMERS WHO ARE TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON JANUARY 1, 2015 ARE ELIGIBLE TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. NOT LATER THAN DECEMBER 15, 2015, EACH CUSTOMER THAT IS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER SHALL PROVIDE WRITTEN NOTICE TO THE ELECTRIC UTILITY THAT PROVIDES THAT CUSTOMER WITH DISTRIBUTION SERVICES. THE WRITTEN NOTICE SHALL STATE WHETHER THE CUSTOMER WILL REMAIN WITH AN ALTERNATIVE ELECTRIC SUPPLIER OR WHETHER THAT CUSTOMER INTENDS TO RETURN TO STANDARD TARIFF SERVICE WITH THE ELECTRIC UTILITY UPON THE TERMINATION OF THE CUSTOMER'S ELECTRICITY SUPPLY CONTRACT WITH AN ALTERNATIVE ELECTRIC SUPPLIER. IF A CUSTOMER INTENDS TO RETURN TO STANDARD TARIFF SERVICE, THE CUSTOMER SHALL INCLUDE WITH THE NOTICE THE DATE THAT THE CUSTOMER INTENDS TO RETURN TO STANDARD TARIFF SERVICE.

(E) PROVIDE THAT A CUSTOMER ON A LIST AWAITING RETAIL OPEN ACCESS SERVICE ON JANUARY 1, 2015 MAY ELECT TO CONTINUE TO REMAIN ON THE LIST TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER IF THAT SERVICE BECOMES AVAILABLE. NOT LATER THAN DECEMBER 15,
2015, EACH CUSTOMER QUALIFIED TO RECEIVE SERVICE UNDER THIS
SUBDIVISION SHALL PROVIDE WRITTEN NOTICE TO THE ELECTRIC UTILITY
THAT PROVIDES THAT CUSTOMER WITH DISTRIBUTION SERVICES. THE WRITTEN
NOTICE SHALL STATE WHETHER THE CUSTOMER WILL REMAIN ON THE LIST OF
CUSTOMERS QUALIFIED TO RECEIVE RETAIL OPEN ACCESS SERVICE.

(F) REQUIRE EACH UTILITY TO FILE WITH THE COMMISSION NO LATER
THAN JANUARY 15, 2016 A LIST OF ALL CUSTOMERS THAT HAVE MADE AN
ELECTION TO BE ELIGIBLE FOR RETAIL OPEN ACCESS SERVICE UNDER
SUBDIVISION (D) OR (E). THE FILING MUST INCLUDE THE ESTIMATED
AMOUNT OF ELECTRICITY USED BY EACH CUSTOMER.

(G) PROVIDE THAT CUSTOMERS SEEKING TO EXPAND USAGE AT A
FACILITY THAT IS SERVED BY AN ALTERNATIVE ELECTRIC SUPPLIER MAY
PURCHASE ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER FOR BOTH
THE EXISTING AND ANY EXPANDED LOAD AT THAT FACILITY AS WELL AS ANY
NEW FACILITY CONSTRUCTED OR ACQUIRED AFTER THE EFFECTIVE DATE OF
THE AMENDATORY ACT THAT ADDED SECTION 6T THAT IS SIMILAR IN NATURE
IF THE CUSTOMER OWNS MORE THAN 50% OF THE NEW FACILITY, REGARDLESS
OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S
AVERAGE WEATHER-ADJUSTED RETAIL SALES.

(H) PROVIDE THAT A CUSTOMER RECEIVING SERVICE FROM AN
ALTERNATIVE ELECTRIC SUPPLIER MAY SUBSEQUENTLY PROVIDE NOTICE TO
THE ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE STANDARD
TARIFF SERVICE FROM THE ELECTRIC UTILITY. IF A CUSTOMER THAT WAS
RECEIVING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE
EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T
SUBSEQUENTLY ELECTS TO RETURN TO ELECTRIC SUPPLY SERVICE FROM THE
ELECTRIC UTILITY, THAT CUSTOMER IS NO LONGER ELIGIBLE TO RECEIVE
ELECTRIC SUPPLY SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. A CUSTOMER THAT ELECTS TO CONTINUE TO RECEIVE ELECTRIC SUPPLY SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER AFTER PROVIDING A UTILITY THE NOTICE REQUIRED UNDER SUBDIVISION (D) MAY RETURN TO STANDARD TARIFF SERVICE FROM AN ELECTRIC UTILITY IF THEY PROVIDE THE ELECTRIC UTILITY 3 YEARS' ADVANCE WRITTEN NOTICE OF THE INTENT TO RETURN TO STANDARD TARIFF SERVICE. A NOTICE OF THE INTENT TO RETURN TO STANDARD TARIFF SERVICE UNDER THIS SUBDIVISION IS IRREVOCABLE. THE ELECTRIC UTILITY MAY WAIVE ANY OR PART OF THIS NOTICE REQUIREMENT FOR ANY CUSTOMER RETURNING TO STANDARD TARIFF SERVICE. IF A CUSTOMER RETURNS TO THE UTILITY FOR ELECTRIC SUPPLY SERVICE WITHOUT PROVIDING 3 YEARS' ADVANCE NOTICE, ANY INCREMENTAL COSTS, INCLUDING BUT NOT LIMITED TO, CAPACITY, ENERGY, ANCILLARY SERVICES, DISTRIBUTION SERVICE, AND TRANSMISSION SERVICE, ASSOCIATED WITH THE RETURN OF THE CUSTOMER SHALL NOT BE BORNE BY ANY OTHER CUSTOMER OF THE ELECTRIC UTILITY OR BY THE ELECTRIC UTILITY. IF THE RETURN OF A CUSTOMER THAT DID NOT PROVIDE 3 YEARS' ADVANCE NOTICE TO THE ELECTRIC UTILITY CREATES ADDITIONAL COSTS OR IMPAIRS RELIABILITY, THE COMMISSION MAY ESTABLISH TARIFF PROVISIONS OR OTHER TERMS AND CONDITIONS TO ASSIGN THOSE COSTS OR IMPAIRMENTS OF RELIABILITY TO THE RETURNING CUSTOMER.

(I) PROVIDE THAT IF THE CUSTOMER NEXT ON THE LIST AWAITING RETAIL OPEN ACCESS SERVICE IS NOTIFIED THAT LESS THAN 10% OF AN ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE PRECEDING CALENDAR YEAR IS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER, THE CUSTOMER MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS
OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES. THE ORDERS SHALL ALSO PROVIDE THAT IF THE CUSTOMER NEXT ON THE LIST AWAITING RETAIL OPEN ACCESS SERVICE REFUSES TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER WITHIN 7 DAYS AFTER BEING NOTIFIED THAT LESS THAN 10% OF AN ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE PRECEDING CALENDAR YEAR IS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER, THAT CUSTOMER WILL BE REMOVED FROM THE LIST AND IS NOT ELIGIBLE TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

(J) PROVIDE THAT AN ELECTRIC UTILITY HAS NO DUTY TO PROVIDE GENERATION RESOURCE ADEQUACY FOR CUSTOMERS RECEIVING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SECTION.

(2) The commission shall issue orders establishing a licensing procedure for all alternative electric suppliers. To ensure adequate service to customers in this state, the commission shall require that an alternative electric supplier maintain an office within this state, shall assure that an alternative electric supplier has the necessary financial, managerial, and technical capabilities, SHALL REQUIRE THAT AN ALTERNATIVE ELECTRIC SUPPLIER FILES ALL OF ITS ELECTRICITY SUPPLY CONTRACTS WITH THE COMMISSION, THE PRICE TERMS OF WHICH MAY BE FILED UNDER SEAL, shall require that an alternative electric supplier maintain records which the commission considers necessary, and shall ensure an alternative electric supplier's accessibility to the commission, to consumers, and to electric utilities in this state. The commission also shall require alternative electric suppliers to agree that they will
collect and remit to local units of government all applicable users, sales, and use taxes. An alternative electric supplier is not required to obtain any certificate, license, or authorization from the commission other than as required by this act.

(3) AS A CONDITION OF LICENSURE, EXCEPT AS PROVIDED UNDER SUBSECTION (4), AN ALTERNATIVE ELECTRIC SUPPLIER SHALL BY NOVEMBER 1 OF EACH YEAR DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT IT WILL BE ABLE TO SUPPLY ENOUGH DEDICATED, FIRM, AND PHYSICAL ELECTRIC GENERATING CAPACITY TO SERVE ITS RETAIL ELECTRIC CUSTOMERS' TOTAL CURRENT PEAK DEMAND INCLUDING A REASONABLE PROJECTION OF TOTAL PEAK DEMAND GROWTH, PLUS THE APPLICABLE PLANNING RESERVE MARGIN REQUIREMENTS, FOR THE SUBSEQUENT 3 YEARS OR THE TERM OF ANY CONTRACT, WHICHEVER IS LONGER.

(4) IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR, WHERE THE ALTERNATIVE ELECTRIC SUPPLIER'S DEMAND IS SERVED, ISSUES A RESOURCE ADEQUACY FORECAST OR SIMILAR CAPACITY ASSESSMENT REPORT THAT PROJECTS A CAPACITY SHORTFALL WITHIN THE SUBSEQUENT 2-YEAR PERIOD, AN ALTERNATIVE ELECTRIC SUPPLIER SHALL DEMONSTRATE TO THE COMMISSION BY NOVEMBER 1 OF THE YEAR IN WHICH THE REPORT IS ISSUED, IN A FORMAT DETERMINED BY THE COMMISSION, THAT IT WILL BE ABLE TO SUPPLY ENOUGH DEDICATED, FIRM, AND PHYSICAL ELECTRIC GENERATING CAPACITY TO SERVE ITS RETAIL ELECTRIC CUSTOMERS' TOTAL CURRENT PEAK DEMAND INCLUDING A REASONABLE PROJECTION OF TOTAL PEAK DEMAND GROWTH, PLUS THE APPLICABLE PLANNING RESERVE MARGIN REQUIREMENTS FOR THE SUBSEQUENT 5 YEARS OR THE TERM OF ANY CONTRACT, WHICHEVER IS LONGER. IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR HAS NOT ISSUED A RESOURCE ADEQUACY FORECAST OR SIMILAR CAPACITY ASSESSMENT
REPORT FOR AT LEAST THE SUBSEQUENT 2-YEAR PERIOD, THE COMMISSION SHALL MAKE A FORMAL REQUEST TO THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR TO ISSUE A RESOURCE ADEQUACY FORECAST OR SIMILAR CAPACITY ASSESSMENT REPORT.

(5) IN DETERMINING WHETHER AN ALTERNATIVE ELECTRIC SUPPLIER HAS DEMONSTRATED ADEQUATE DEDICATED, FIRM, AND PHYSICAL ELECTRIC GENERATING CAPACITY TO MEET THE REQUIREMENTS OF SUBSECTIONS (3) AND (4), THE COMMISSION SHALL ONLY CONSIDER THE FOLLOWING:

(A) CAPACITY THAT IS PHYSICALLY LOCATED IN OR DELIVERABLE TO THE RESOURCE ADEQUACY ZONE, AS DEFINED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR, WHERE THE ALTERNATIVE ELECTRIC SUPPLIER'S DEMAND IS SERVED IN THIS STATE.

(B) IF THE ALTERNATIVE ELECTRIC SUPPLIER RELIES ON POWER PURCHASE CONTRACTS FOR ANY PORTION OF ITS DEMONSTRATION OF CAPACITY SUPPLY UNDER SUBSECTIONS (3) AND (4), THAT THE POWER PURCHASE CONTRACTS ARE PREPAID FOR THE PERIODS REQUIRED UNDER SUBSECTIONS (3) AND (4).

(C) IF THE ALTERNATIVE ELECTRIC SUPPLIER RELIES ON CAPACITY THAT IS THE RESULT OF A WHOLESALE MARKET AUCTION FOR ANY PORTION OF ITS DEMONSTRATION OF CAPACITY SUPPLY UNDER SUBSECTIONS (3) AND (4), THAT THE MARKET AUCTION PURCHASES SHALL NOT EXCEED 5% OF THE ALTERNATIVE ELECTRIC SUPPLIER'S CAPACITY REQUIREMENTS UNDER SUBSECTIONS (3) AND (4).

(D) IF THE ALTERNATIVE ELECTRIC SUPPLIER'S CAPACITY PURCHASES UNDER SUBDIVISION (B) OR (C) REQUIRE THE CAPACITY TO BE TRANSPORTED INTO THIS STATE, THAT THE ALTERNATIVE ELECTRIC SUPPLIER HAS THE CONTRACTED TRANSMISSION CAPACITY TO IMPORT THAT CAPACITY INTO THE
RESOURCE ADEQUACY ZONE, AS DEFINED BY THE APPROPRIATE INDEPENDENT
SYSTEM OPERATOR, WHERE THE ALTERNATIVE ELECTRIC SUPPLIER'S DEMAND
IS SERVED IN THIS STATE.

(6) IF AN ALTERNATIVE ELECTRIC SUPPLIER IS UNABLE TO
DEMONSTRATE TO THE COMMISSION THAT IT HAS PROCURED THE DEDICATED,
FIRM, AND PHYSICAL CAPACITY UNDER THE REQUIREMENTS OF SUBSECTIONS
(3), (4), AND (5), THE COMMISSION SHALL NOTIFY THE ALTERNATIVE
ELECTRIC SUPPLIER IN WRITING THAT THE ALTERNATIVE ELECTRIC SUPPLIER
HAS 60 DAYS TO REMEDY ANY DEFECTS IDENTIFIED BY THE COMMISSION. IF
THE ALTERNATIVE ELECTRIC SUPPLIER FAILS TO REMEDY THE DEFECTS
IDENTIFIED BY THE COMMISSION WITHIN 60 DAYS, THE COMMISSION SHALL
REVOKE THE ALTERNATIVE ELECTRIC SUPPLIER'S LICENSE TO SUPPLY
ELECTRICITY AND BAR THAT ALTERNATIVE ELECTRIC SUPPLIER FROM
PROVIDING ELECTRICITY SUPPLY IN THIS STATE FOR A 3-YEAR PERIOD.

(7) THE COMMISSION'S CONSIDERATION OF AN ALTERNATIVE ELECTRIC
SUPPLIER'S ANNUAL DEMONSTRATION OF CAPACITY REQUIRED SHALL BE
PERFORMED UNDER A CONTESTED CASE PROCEEDING UNDER CHAPTER 4 OF THE
ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
24.287.

(8) THE COMMISSION SHALL ESTABLISH PLANNING RESERVE MARGIN
REQUIREMENTS UNDER SUBSECTIONS (3) AND (4) FOR ALL CUSTOMER
ELECTRIC LOADS SERVED BY ALTERNATIVE ELECTRIC SUPPLIERS IN THIS
STATE. THE PLANNING RESERVE MARGIN REQUIREMENTS SHALL BE BASED ON
RECENT ACTUAL LEVELS OF PEAK DEMAND PLUS A REASONABLE PROJECTION OF
5-YEAR PEAK DEMAND GROWTH, AND SHALL BE DESIGNED TO ENSURE THAT THE
RISK OF AN OUTAGE IN THIS STATE DUE TO LACK OF ELECTRICITY SUPPLY
IS NO MORE LIKELY THAN ONCE EVERY 10 YEARS. THE PLANNING RESERVE
MARGIN REQUIREMENT MAY TAKE INTO ACCOUNT CUSTOMER DEMAND RESPONSE MEASURES ONLY IF THE COMMISSION DETERMINES THAT THE DEMAND RESPONSE MEASURES ARE AS RELIABLE AS FIRM, PHYSICAL GENERATING CAPACITY. THE COMMISSION MAY ELECT TO USE THE PLANNING RESERVE MARGIN REQUIREMENT SET BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR.

(9) The commission shall issue orders to ensure that customers in this state are not switched to another supplier or billed for any services without the customer's consent.

(10) No later than December 2, 2000, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between an electric utility's regulated ELECTRIC SERVICES and unregulated RETAIL OPEN ACCESS services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10cc.

(11) An electric utility may offer its customers an appliance service program AND OTHER VALUE ADDED PROGRAMS AND SERVICES. Except as otherwise provided by this section, the utility shall comply with the code of conduct established by the commission under subsection (4). As used in this section, "appliance service program" or "program" means a subscription program for the repair and servicing of heating and cooling systems or other appliances.

(12) A utility offering a program under subsection (5)...
(11) shall do all of the following:

(a) Locate within a separate department of the utility or affiliate within the utility's corporate structure the personnel responsible for the day-to-day management of the program.

(b) Maintain separate books and records for the program, access to which shall be made available to the commission upon request.

(c) Not promote or market the program through the use of utility billing inserts, printed messages on the utility's billing materials, or other promotional materials included with customers' utility bills.

(13) All costs directly attributable to an appliance service program allowed under subsection (5) shall be allocated to the program as required by this subsection. The direct and indirect costs of employees, vehicles, equipment, office space, and other facilities used in the appliance service program shall be allocated to the program based upon the amount of use by the program as compared to the total use of the employees, vehicles, equipment, office space, and other facilities. The cost of the program shall include administrative and general expense loading to be determined in the same manner as the utility determines administrative and general expense loading for all of the utility's regulated and unregulated activities. A subsidy by a utility does not exist if costs allocated as required by this subsection do not exceed the revenue of the program.

(14) A utility may include charges for its appliance service program programs offered under subsection (11) on its
monthly billings to its customers if the utility complies with all of the following requirements:

(a) All costs associated with the billing process, including the postage, envelopes, paper, and printing expenses, are allocated as required under subsection (7)—(13).

(b) A customer's regulated utility service is not terminated for nonpayment of the appliance service program portion—PORTIONS of the bill.

(c) Unless the customer directs otherwise in writing, a partial payment by a customer is applied first to the bill for regulated service.

(15)—(9) In marketing its appliance service—A program OFFERED UNDER SUBSECTION (11) to the public, a utility shall do all of the following:

(a) The list of customers receiving regulated service from the utility shall be available to a provider of appliance repair service—THE PROGRAM upon request within 2 business days. The customer list shall be provided in the same electronic format as such—THAT information is provided to the appliance service program. A new customer shall be added to the customer list within 1 business day of the date the customer requested to turn on service.

(b) Appropriately allocate costs as required under subsection (7)—(13) when personnel employed at a utility's call center provide appliance service—program marketing information to a prospective customer.

(c) Prior to—BEFORE enrolling a customer into the program, the utility shall inform the potential customer of all of the
following:

(i) That appliance service programs may be available from another provider.

(ii) That the appliance service program is not regulated by the commission.

(iii) That a new customer shall have 10 days after enrollment to cancel his or her appliance service program contract without penalty. THIS CANCELLATION PERIOD DOES NOT APPLY TO A UTILITY'S OTHER VALUE ADDED PROGRAMS AND SERVICES OFFERED UNDER SUBSECTION (11).

(iv) That the customer's regulated rates and conditions of service provided by the utility are not affected by enrollment in the program or by the decision of the customer to use the services of another provider of appliance repair service.

(d) The utility name and logo may be used to market the appliance service program provided that IF the program is not marketed in conjunction with a regulated service. To the extent that IF a program utilizes the utility's name and logo in marketing the program, the program shall include language on all material indicating that the program is not regulated by the commission. Costs shall not be allocated to the program for the use of the utility's name or logo.

(16) (10) This section does not prohibit the commission from requiring a utility THE COMMISSION IS NOT REQUIRED to include revenues from an appliance service program in establishing base rates. If the commission includes the revenues of an appliance service program in determining a utility's base rates, the
commission shall also include all of the costs of the program as
determined under this section. The Commission may permit a utility
to retain profits generated by a program, and the utility may use a
portion of the revenues from a program to invest in business
development of new programs and services.

(11) Except as otherwise provided in this section, the code of
conduct with respect to an appliance service program shall not
require a utility to form a separate affiliate or division to
operate an appliance service program, impose further restrictions
on the sharing of employees, vehicles, equipment, office space, and
other facilities, or require the utility to provide other providers
of appliance repair service with access to utility employees,
vehicles, equipment, office space, or other facilities.

(17) This act does not prohibit or limit the right of a
person to obtain self-service power and does not impose a
transition, implementation, exit fee, or any other similar charge
on self-service power. A person using self-service power is not an
electric supplier, electric utility, or a person conducting an
electric utility business. As used in this subsection, "self-
service power" means any of the following:

(a) Electricity generated and consumed at an industrial site
or contiguous industrial site or single commercial establishment or
single residence without the use of an electric utility's
transmission and distribution system.

(b) Electricity generated primarily by the use of by-product
fuels, including waste water solids, which electricity is consumed
as part of a contiguous facility, with the use of an electric
utility's transmission and distribution system, but only if the
point or points of receipt of the power within the facility are not
greater than 3 miles distant from the point of generation.

(c) A site or facility with load existing on June 5, 2000 that
is divided by an inland body of water or by a public highway, road,
or street but that otherwise meets this definition meets the
contiguous requirement of this subdivision regardless of whether
self-service power was being generated on June 5, 2000.

(d) A commercial or industrial facility or single residence
that meets the requirements of subdivision (a) or (b) meets this
definition whether or not the generation facility is owned by an
entity different from the owner of the commercial or industrial
site or single residence.

(18) (13) This act does not prohibit or limit the right of a
person to engage in affiliate wheeling and does not impose a
transition, implementation, exit fee, or any other similar charge
on a person engaged in affiliate wheeling. As used in this section:

(a) "Affiliate" means a person or entity that directly, or
indirectly through 1 or more intermediates, controls, is controlled
by, or is under common control with another specified entity. As
used in this subdivision, "control" means, whether through an
ownership, beneficial, contractual, or equitable interest, the
possession, directly or indirectly, of the power to direct or to
cause the direction of the management or policies of a person or
entity or the ownership of at least 7% of an entity either directly
or indirectly.

(b) "Affiliate wheeling" means a person's use of direct access
service where an electric utility delivers electricity generated at
a person's industrial site to that person or that person's
affiliate at a location, or general aggregated locations, within
this state that was either 1 of the following.

(i) For at least 90 days during the period from January 1,
1996 to October 1, 1999, supplied by self-service power, but only
to the extent of the capacity reserved or load served by self-
service power during the period.

(ii) Capable of being supplied by a person's cogeneration
capacity within this state that has had since January 1, 1996 a
rated capacity of 15 megawatts or less, was placed in service
before December 31, 1975, and has been in continuous service since
that date. A person engaging in affiliate wheeling is not an
electric supplier, an electric utility, or conducting an electric
utility business when a person engages in affiliate wheeling.

(19) (14) The rights of parties to existing contracts and
agreements in effect as of January 1, 2000 between electric
utilities and qualifying facilities, including the right to have
the charges recovered from the customers of an electric utility, or
its successor, shall not be abrogated, increased, or diminished
by this act, nor shall the receipt of any proceeds of the
securitization bonds by an electric utility be a basis for any
regulatory disallowance. Further, any securitization or financing
order issued by the commission that relates to a qualifying
facility's power purchase contract shall fully consider that
qualifying facility's legal and financial interests.

(15) A customer who elects to receive service from an
alternative electric supplier may subsequently provide notice to
the electric utility of the customer's desire to receive standard
tariff service from the electric utility. The procedures in place
for each electric utility as of January 1, 2008 that set forth the
terms pursuant to which a customer receiving service from an
alternative electric supplier may return to full service from the
electric utility are ratified and shall remain in effect and may be
amended by the commission as needed. If an electric utility did not
have the procedures in place as of January 1, 2008, the commission
shall adopt those procedures.

(20) (16) The commission shall authorize rates that will
ensure that an electric utility that offered retail open access
service from 2002 through the effective date of the amendatory act
that added this subsection OCTOBER 6, 2008 fully recovers its
restructuring costs and any associated accrued regulatory assets.
This includes, but is not limited to, implementation costs,
stranded costs, and costs authorized pursuant to UNDER section
10d(4) as it existed prior to the effective date of the amendatory
act that added this subsection, BEFORE OCTOBER 6, 2008, that have
been authorized for recovery by the commission in orders issued
prior to the effective date of the amendatory act that added this
subsection, BEFORE OCTOBER 6, 2008. The commission shall approve
surcharges that will ensure full recovery of all such costs within
5 years of the effective date of the amendatory act that added this
subsection, BY OCTOBER 6, 2013.

(17) As used in subsections (1) and (15):
(a) "Customer" means the building or facilities served through
a single existing electric billing meter and does not mean the
person, corporation, partnership, association, governmental body,
or other entity owning or having possession of the building or
facilities.

(b) "Standard tariff service" means, for each regulated
electric utility, the retail rates, terms, and conditions of
service approved by the commission for service to customers who do
not elect to receive generation service from alternative electric
suppliers.

(21) AS USED IN THIS SECTION:

(A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
OR INDIRECTLY.

(B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

(i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,
1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY
TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-
SERVICE POWER DURING THE PERIOD.

(i) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE
BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

(C) "APPLIANCE SERVICE PROGRAM" MEANS A SUBSCRIPTION PROGRAM
FOR THE REPAIR AND SERVICING OF HEATING AND COOLING SYSTEMS OR
OTHER APPLIANCES.

(D) "CUSTOMER" MEANS THE BUILDING OR FACILITIES SERVED THROUGH
A SINGLE EXISTING ELECTRIC BILLING METER AND DOES NOT MEAN THE
PERSON, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL BODY,
OR OTHER ENTITY OWNING OR HAVING POSSESSION OF THE BUILDING OR
FACILITIES.

(E) "PROGRAM" MEANS AN APPLIANCE SERVICE PROGRAM OR OTHER
VALUE ADDED PROGRAMS AND SERVICES, OR BOTH.

(F) "STANDARD TARIFF SERVICE" MEANS, FOR EACH REGULATED
ELECTRIC UTILITY, THE RETAIL RATES, TERMS, AND CONDITIONS OF
SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO CUSTOMERS THAT DO
NOT ELECT TO RECEIVE GENERATION SERVICE FROM ALTERNATIVE ELECTRIC
SUPPLIERS.

Sec. 10f. (1) If, After subtracting the average demand
for each retail customer under contract that exceeds 15% of the
utility's retail load in the relevant market, an electric utility
has commercial control over more than 30% of the generating
capacity available to serve a relevant market, the utility shall do
1 or more of the following with respect to any generation in excess
of that required to serve its firm retail sales load, including a
reasonable reserve margin:

(a) Divest a portion of its generating capacity.
(b) Sell generating capacity under a contract with a nonretail
purchaser for a term of at least 5 years.
(c) Transfer generating capacity to an independent brokering
trustee for a term of at least 5 years in blocks of at least 500
megawatts, 24 hours per day.

(2) The total generating capacity available to serve the
relevant market shall be determined by the commission and shall
equal the sum of the firm available transmission capability into
the relevant market and the aggregate generating capacity located
within the relevant market, less 1 or more of the following:

(a) If a municipal utility does not permit its retail
customers to select alternative electric suppliers, the generating
capacity owned by a municipal utility necessary to serve the retail
native load.
(b) Generating capacity dedicated to serving on-site load.
(c) The generating capacity of any multistate electric
supplier jurisdictionally assigned to customers of other states.

(3) Within 30 days after a commission determination of the
total generating capacity under subsection (2) in a relevant
market, an electric utility that exceeds the 30% limit shall file
an application with the commission for approval of a market power
mitigation plan. The commission shall approve the plan if it is
consistent with this act or require modifications to the plan to make it consistent with this act. The utility shall retain the right to determine what specific actions to take to achieve compliance with this section.

(4) An independent brokering trustee shall be completely independent from and have no affiliation with the utility. The terms of any transfer of generating capacity shall ensure that the trustee has complete control over the marketing, pricing, and terms of the transferred capacity for at least 5 years and shall provide appropriate performance incentives to the trustee for marketing the transferred capacity.

(5) Upon application to the commission by the utility, the commission may issue an order approving a change in trustees during the 5-year term upon a showing that a trustee has failed to market the transferred generating capacity in a prudent and experienced manner.

(6) Within 1 year of the effective date of the amendatory act that added this section, the commission shall issue a report to the governor and the legislature that analyzes all aspects relating to market power in the Upper Peninsula of this state. The report shall include, but not be limited to, concentration of generating capacity, control of the transmission system, restrictions on the delivery of power, ability of new suppliers to enter the market, and identification of any market power problems under the existing market power test. Prior to issuing its report, the commission shall receive written comments and hold hearings to solicit public input.
Sec. 10p. (1) Each electric utility operating in this state shall establish an industry worker transition program that shall, in consultation with employees or applicable collective bargaining representatives, provide skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

(2) The costs resulting from subsection (1) shall include audited and verified employee-related restructuring costs that are incurred as a result of the amendatory act that added this section or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission.

(3) In the event of a sale, purchase, or any other transfer of ownership of 1 or more Michigan divisions or business units, or generating stations or generating units, of an electric utility, to either a third party or a utility subsidiary, the electric utility's contract and agreements with the acquiring entity or persons shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of
employment to the nonsupervisory workforce of the electric
utility's division, business unit, generating station, or
generating unit.

(b) That the acquiring entity or persons not employ
nonsupervisory employees from outside the electric utility's
workforce unless offers of employment have been made to all
qualified nonsupervisory employees of the acquired business unit or
facility.

(c) That the acquiring entity or persons have a dispute
resolution mechanism culminating in a final and binding decision by
a neutral third party for resolving employee complaints or disputes
over wages, fringe benefits, and working conditions.

(d) That the acquiring entity or persons offer employment at
no less than the wage rates and substantially equivalent fringe
benefits and terms and conditions of employment that are in effect
at the time of transfer of ownership of the division, business
unit, generating station, or generating unit. The wage rates and
substantially equivalent fringe benefits and terms and conditions
of employment shall continue for at least 30 months from the time
of the transfer of ownership unless the employees, or where
applicable collective bargaining representative, and the new
employer mutually agree to different terms and conditions of
employment within that 30-month period.

(4) The electric utility shall offer a transition plan to
those employees who are not offered jobs by the entity because the
entity has a need for fewer workers. If there is litigation
concerning the sale, or other transfer of ownership of the electric
utility's divisions, business units, generating stations, or
generating units, the 30-month period under subsection (3) begins
on the date the acquiring entity or persons take control or
management of the divisions, business units, generating stations,
or generating units of the electric utility.

(5) The commission shall adopt generally applicable service
quality and reliability standards for the transmission, generation,
and distribution systems of electric utilities and other entities
subject to its jurisdiction, including, but not limited to,
standards for service outages, distribution facility upgrades,
repairs and maintenance, telephone service, billing service,
operational reliability, and public and worker safety. In setting
service quality and reliability standards, the commission shall
consider safety, costs, local geography and weather, applicable
codes, national electric industry practices, sound engineering
judgment, and experience. The commission shall also include
provisions to upgrade the service quality of distribution circuits
that historically have experienced significantly below-average
performance in relationship to similar distribution circuits.

(6) Annually, each jurisdictional utility or entity shall file
its report with the commission detailing actions to be taken to
comply with the service quality and reliability standards during
the next calendar year and its performance in relation to the
service quality and reliability standards during the prior calendar
year. The annual reports shall contain that data as required by the
commission, including the estimated cost of achieving improvements
in the jurisdictional utility's or entity's performance with
respect to the service quality and reliability standards.

(7) The commission shall analyze the data to determine whether
the jurisdictional entities are properly operating and maintaining
their systems and take corrective action if needed.

(8) The commission shall submit a report to the governor and
the legislature by September 1, 2009. In preparing the report, the
commission should review and consider relevant existing customer
surveys and examine what other states have done. This report shall
include all of the following:

(a) An assessment of the major types of end-use customer power
quality disturbances, including, but not limited to, voltage sags,
evervoltagess, oscillatory transients, voltage swells, distortion,
power frequency variations, and interruptions, caused by both the
distribution and transmission systems within this state.

(b) An assessment of utility power plant generating cost
efficiency, including, but not limited to, operational efficiency,
economic generating cost efficiency, and schedules for planned and
unplanned outages.

(c) Current efforts employed by the commission to monitor or
enforce standards pertaining to end-use customer power quality
disturbances and utility power plant generating cost efficiency
either through current practice, statute, policy, or rule.

(d) Recommendations for use of common characteristics,
measures, and indices to monitor power quality disturbances and
power plant generating cost efficiency, such as expert customer
service assessments, frequency of disturbance occurrence, duration
of disturbance, and voltage magnitude.
Recommendations for statutory changes that would be necessary to enable the commission to properly monitor and enforce standards to optimize power plant generating cost efficiency and minimize power quality disturbances. These recommendations shall include recommendations to provide methods to ensure that this state can obtain optimal and cost-effective end-use customer power quality to attract economic development and investment into the state.

(8) By December 31, 2009, the commission shall, based on its findings in subsection (8), review its existing rules under this section and amend the rules, if needed, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement performance standards for generation facilities and for distribution facilities to protect end-use customers from power quality disturbances.

(9) Any standards or rules developed under this section shall be designed to do the following, as applicable:

(a) Establish different requirements for each customer class, whenever those different requirements are appropriate to carry out the provisions of this section, and to reflect different load and service characteristics of each customer class.

(b) Consider the availability and associated cost of necessary equipment and labor required to maintain or upgrade distribution and generating facilities.

(c) Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including consideration of the installation of equipment or adoption of
operating practices at the end-user's location.

(d) Take into account the extent to which the benefits associated with achieving a specified standard or improvement are offset by the incremental capital, fuel, and operation and maintenance expenses associated with meeting the specified standard or improvement.

(e) Carefully consider the time frame for achieving a specified standard, taking into account the time required to implement needed investments or modify operating practices.

(10) The commission shall also create benchmarks for individual jurisdictional entities within their rate-making process in order to accomplish the goals of this section to alleviate end-use customer power quality disturbances and promote power plant generating cost efficiency.

(11) The commission shall establish a method for gathering data from the industrial customer class to assist in monitoring power quality and reliability standards related to service characteristics of the industrial customer class.

(12) The commission is authorized to levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

(13) As used in this section, "jurisdictional utility" or "jurisdictional entity" means jurisdictional regulated utility as that term is defined in section 6q.

Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales
information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition for electric generation service in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different classes of customers, whenever the different requirements are appropriate to carry out the purposes of this section.

(2) The commission shall require that, starting January 1, 2002, all electric suppliers disclose in standardized, uniform format on the customer's bill with a bill insert, on customer contracts, or, for cooperatives, in periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity products purchased by the customer, including all of the following:

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only
for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. For the purposes of this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.

(b) The average emissions, in pounds per megawatt hour, sulfur dioxide, carbon dioxide, and oxides of nitrogen. An emissions default, determined by the commission, may be used if the regional average fuel mix is being disclosed.

(c) The average of the high-level nuclear waste generated in pounds per megawatt hour.

(d) The regional average fuel mix and emissions profile as referenced in subdivisions (a), (b), and (c).

(3) The information required by subsection (2) shall be provided no more than twice annually, and be based on a rolling annual average. Emissions factors will be based on annual publicly available data by generation source.

(4) All of the information required to be provided under subsection (1) shall also be provided to the commission to be included on the commission’s internet site.

(5) The commission shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

(6) Within 2 years of the effective date of the amendatory act
that added this subsection, the commission shall conduct a study and report to the governor and the house and senate standing committees with oversight of public utilities issues on the advisability of separating electric distribution and generation within electric utilities, taking into account the costs, benefits, efficiencies to be gained or lost, effects on customers, effects on reliability or quality of service, and other factors which the commission determines are appropriate. The report shall include, but is not limited to, the advisability of locating within separate departments of the utility the personnel responsible for the day-to-day management of electric distribution and generation and maintaining separate books and records for electric distribution and generation.

(7) Two years after the effective date of the amendatory act that added this subsection, the commission shall conduct a study and report to the governor and the house and senate standing committees with oversight of public utilities issues on whether the state would benefit from the creation of a purchasing pool in which electric generation in this state is purchased and then resold. The report shall include, but is not limited to, whether the purchasing pool shall be a separate entity from electric utilities, the impact of such a pool on electric utilities' management of their electrical generating assets, and whether ratepayers would benefit from spreading the cost of new electric generation across all or a portion of this state.

(6) (8) Within 270 days of the effective date of the amendatory act that added this subsection, \textbf{BY JULY 3, 2009}, each
electric utility regulated by the commission shall file with the
commission a plan for utilizing dispatchable customer-owned
distributed generation within the context of its integrated
resource planning process. Included in the utility's filing shall
be proposals for enrolling and compensating customers for the
utility's right to dispatch at-will the distributed generation
assets owned by those customers and provisions requiring the
customer to maintain these assets in a dispatchable condition. If
an electric utility already has programs addressing the subject of
the filing required under this subsection, the utility may refer to
and take credit for those existing programs in its proposed plan.

Sec. 10t. (1) An electric utility or alternative electric
supplier shall not shut off service to an eligible customer during
the heating season for nonpayment of a delinquent account if the
customer is an eligible senior citizen customer or if the customer
pays to the utility or supplier a monthly amount equal to 7% of the
estimated annual bill for the eligible customer and the eligible
customer demonstrates, within 14 days of requesting shutoff
protection, that he or she has applied for state or federal heating
assistance. If an arrearage exists at the time an eligible customer
applies for protection from shutoff of service during the heating
season, the utility or supplier shall permit the customer to pay
the arrearage in equal monthly installments between the date of
application and the start of the subsequent heating season.

(2) An electric utility or alternative electric supplier may
shut off service to a customer as provided in Part 7 of the Clean
and Efficient Energy Act, 2008 PA 295, MCL 460.1201 to 460.1211, or
TO an eligible low-income customer who does not pay the monthly amounts required under subsection (1) after giving notice in the manner required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments required under subsection (1).

(3) If a customer fails to comply with the terms and conditions of this section, an electric utility may shut off service on its own behalf or on behalf of an alternative electric supplier after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

(a) That the customer has NOT PAID THE PER-METER CHARGE UNDER SECTION 207 OF THE CLEAN AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1207, OR THE CUSTOMER HAS defaulted on the winter protection plan.

(b) The nature of the default.

(c) That unless the customer makes the payments that are past due within 10 days of the date of mailing, the utility or supplier may shut off service.

(d) The date on or after which the utility or supplier may shut off service, unless the customer takes appropriate action.

(e) That the customer has the right to file a complaint disputing the claim of the utility or supplier before the date of the proposed shutoff of service.

(f) That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and that the customer shall pay to the utility or supplier...
that portion of the bill that is not in dispute within 3 days of
the date that the customer requests a hearing.

(g) That the customer has the right to represent himself or
herself, to be represented by an attorney, or to be assisted by any
other person of his or her choice in the complaint process.

(h) That the utility or supplier will not shut off service
pending the resolution of a complaint that is filed with the
utility in accordance with this section.

(i) The telephone number and address of the utility or
supplier where the customer may make inquiry, enter into a
settlement agreement, or file a complaint.

(j) That the customer should contact a social services agency
immediately if the customer believes he or she might be eligible
for emergency economic assistance.

(k) That the utility or supplier will postpone shutoff of
service if a medical emergency exists at the customer's residence.

(l) That the utility or supplier may require a deposit and
restoration charge if the supplier shuts off service for nonpayment
of a delinquent account.

(4) An electric utility is not required to shut off service
under this section to an eligible customer for nonpayment to an
alternative electric supplier.

(5) The commission shall establish an educational program to
ensure that eligible customers are informed of the requirements and
benefits of this section.

(6) As used in this section:

(a) "Eligible customer" means either an eligible low-income
customer or an eligible senior citizen customer.

    (b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the United States department of health and human services, or who receives any of the following:

        (i) Assistance from a state emergency relief program.

        (ii) Food stamps.

        (iii) Medicaid.

    (c) "Eligible senior citizen customer" means a utility or supplier customer who is 65 years of age or older and who advises the utility of his or her eligibility.

    Enacting section 1. Section 6e of 1939 PA 3, MCL 460.6e, is repealed.

    Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.